

Opening Statement of the Honorable Tim Murphy
Subcommittee on Oversight and Investigations
Hearing on “The Impact of Patent Assertion Entities on Innovation and the Economy”
November 14, 2013

(As Prepared for Delivery)

We convene this hearing of the Subcommittee on Oversight and Investigations to gain a better understanding of the impact abusive patent assertion practices are having on businesses, jobs, and the economy.

Let me state at the outset that a strong and fair patent system is essential to an innovative marketplace. Inventors and companies should be encouraged to research and develop ideas, technologies, and products and be rewarded for their risk and investment. In addition, I fully recognize that patent rights are only as valuable as their holder's ability to enforce them.

The intent of today's hearing is not to assess the current state of our nation's patent system or to opine on the various legislative proposals that have recently been introduced or discussed in this area. Nor is this hearing intended to be a comprehensive look at all patent assertion activity that occurs in advance of litigation. This is about gathering facts about the nature and scope of this problem. Our purpose in holding this hearing is to learn more about a number of questionable practices that have recently proliferated and the significant direct and indirect costs they have imposed on businesses, large and small.

Specifically, most of the witnesses testifying today are representatives of companies from different industries who have received letters from various entities demanding licensing fees or threatening litigation over the purported use of patented technologies or products. Frequently, they are little more than form letters blasted off to hundreds or even thousands of recipients with the hope that some of them will quickly cave in order to avoid the prospect of expensive litigation. It has been estimated that the average patent trial can last over a year and cost upwards of six million dollars. This is simply not a viable course of action for a small business. Unfortunately, this makes them attractive targets.

We will hear today about some of the more egregious types of demand letters and whether they even contain sufficient information to allow for an informed response. Most importantly, we will hear about how responding to such demand letters impacts a business's ability to attract new capital, utilize new technologies, hire new workers, and ultimately grow their company and our overall economy. One recent study from researchers at Boston University calculated that patent assertion activity directly cost defendants and licensees \$29 billion in 2011. This figure represents a 400% increase since 2005 and does not even include the indirect costs to businesses such as diversion of resources, delays in new products, and loss of market share.

A number of other studies on patent assertion entities have recently been conducted. We will hear from a number of individuals with significant experience in this area about how such practices have evolved, whether more egregious tactics are currently being employed and, if so, what can be done to stop them without weakening legitimate intellectual property rights, enforcement activities, or pre-litigation communications.

Further, the Federal Trade Commission announced in September that it will be conducting a formal inquiry examining the business practices of patent assertion entities in order to “expand the empirical picture on the costs and benefits of PAE activity.” We look forward to reviewing the results of this inquiry and in the meantime will continue to further our understanding of such practices. As always, we will follow the facts so that our oversight can inform any solutions that may be proposed to address the underlying problems relating to abusive demand letters and related practices. Today is a first step in that process. I look forward to hearing the examples and perspectives provided by our witnesses and I look forward to hearing from those who may disagree with them in the near future. I fully anticipate that we can work together on a bipartisan basis on these issues going forward.

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